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CMS Reinstates Vaccine Mandate in Wisconsin and 24 Other States with New Timelines

On Dec. 28, the Centers for Medicare & Medicaid Services (CMS) reversed course and announced that it will be taking steps to enforce the CMS COVID vaccination mandate interim final rule in Wisconsin and 24 other states, but on a modified compliance timeline. Under the new timeline, Phase 1 implementation must be completed by Jan. 27, 2022, and Phase 2 implementation must be completed by Feb. 28, 2022.

Prior to an earlier CMS announcement suspending implementation of the rule pending future federal litigation developments, Phase 1 implementation was Dec. 4, 2021, and Phase 2 implementation was Jan. 4, 2022.

While staff vaccination rates for most WHA members indicate less than 2% of their workforce is being impacted by loss due to vaccine requirements, and even less in direct patient care roles, it appears that nursing home capacity will be substantially impacted due to significantly lower current staff vaccination rates in nursing homes.

"Approximately 600 patients are currently occupying staffed hospital beds waiting, sometimes for months, to be discharged to a nursing home, long-term care or recovery facility," said WHA President and CEO Eric Borgerding. "Can CMS actually show that the federal mandate will improve the ability of nursing homes to accept

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As Hospitals Pushed to Limit by COVID Surge, United Ready to Deny Emergency Care

UnitedHealth Group profits rose to over $4 billion for the third quarter of 2021

In a surprising new policy from UnitedHealthcare (UHC), the insurer lays out vague criteria that will allow the company to deny coverage for care delivered in an emergency room. The surprise is that it comes just six months after the insurer attempted a similar policy but withdrew it after significant backlash. At the time, UHC publicly stated that it would not implement a new emergency service coverage policy at least until the end of the public health emergency. It also comes just two months after news that UnitedHealth Group's latest profit rose past the $4 billion mark for the third quarter of 2021, according to Fierce HealthCare.

"The public health emergency is not over. COVID case counts continue to increase across the country, including right here in Wisconsin. Hospitals are struggling to meet the needs of a growing number of patients, while continuing to address capacity challenges and a fatigued health care workforce," said WHA Senior Vice President of Public Policy Joanne Alig. "While these kinds of insurer obstructions certainly shouldn't be implemented at this critical time, they really shouldn't be implemented ever," Alig continued.

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At issue is whether an insurer should be able to determine after the fact that a patient should have sought care in an emergency room or somewhere else. Federal law and state law in Wisconsin require that insurers cover emergency services; and in doing so, they are required to apply what is known as a "prudent layperson standard," which is an important patient protection. The prudent layperson standard essentially says that if a reasonable person with an average knowledge of health and medicine thinks his or her health is in jeopardy based on his or her symptoms, then it is an emergency medical condition.

According to the American Hospital Association (AHA), the new criteria at first glance appear to be an improvement over the previous version, but come with a significant caveat that, in the end, would undercut any seeming improvements. Under UHC's new policy, the insurance company will continue to take into account the final diagnosis and "other pertinent information" in determining after the fact if the visit was an emergency. Providers are particularly concerned with the term "other pertinent information," which gives the company significant latitude to deny coverage after the fact. Like the previous version, the uncertainty will make patients reluctant to seek emergency care.

AHA also points out that the new policy will place an incredible administrative burden on the health care workforce. "The risk of excessive administrative burden is particularly high, as this policy allows UHC to manipulate its coverage criteria through the vague criterion of 'other pertinent information'," the association states. "Failure to clearly establish coverage criteria leaves both patients and providers in the dark, and such ambiguous terms will almost certainly result in providers being asked to send to UHC voluminous amounts of paperwork to satisfy whatever information it requests to in order to approve coverage."

While the policy is expected to go into effect Jan. 1 in all states, AHA in a letter urged UHC to reconsider its misguided coverage criteria.

COVID Continues Stressing Health Care

By Eric Borgerding, WHA President and CEO

Eric Borgerding

Falling COVID cases this summer suggested the pandemic was behind us. That relief was short-lived. This fall's Delta-fueled spike—the state's third COVID surge—continues to escalate as of this writing while vaccination rates are slow to improve. This combination is causing more serious illness and longer hospital stays, straining hospital capacity. As life and commerce outside hospitals returns to normal, inside hospitals it's been over a year of a continuous state of surge, requiring more resources and stressing capacity.

For months, hospitals have been dealing with the effects of delayed non-COVID care caused by the federal suspension of non-emergent care in 2020 or COVID "crowding out" capacity for other care or patients remaining hesitant to seek care during the pandemic. That delayed care is resulting in very high volumes and typically sicker, more resource-intensive patients today.

The CDC estimates that by June 30, 2020, approximately 41% of adults had put off needed health care because of the pandemic. This has been the trend through 2021. Hospitals have learned to "coexist with COVID," which, among other things, means avoiding postponement of other types of care while also treating surging COVID patients. However, managing both translates into capacity and workforce-stressing volumes, which are reaching their limits in the most recent surge.

At the same time, capacity needed to serve such high demand is severely constrained by seemingly unrelated problems in Wisconsin nursing homes. For months, hundreds of staffed hospital beds, desperately needed for inpatient care, have been occupied by patients who no longer need hospital care. This is because nursing homes, for various reasons, cannot or will not accept their dischargeable hospitalized residents or other patients needing nursing home care. The nursing home bottleneck is impacting the ability of hospitals to care for other patients.

As in other industries, the extremely tight labor market is causing skyrocketing labor costs and rapid wage inflation in health care. This is partly driven by growing reliance on temporary nurse staffing agencies, which are charging double or more their typical price, as nationally, everyone is competing for the same finite pool of these traveling staff. While labor comprises 60% of hospital operating costs, hospitals cannot limit their hours or scale back production in response to worker shortages or wage inflation. They must be there 24 hours a day, every day.

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Operating and total margins were down for most Wisconsin hospitals in FY 2020, with many booking negative margins. Overall, Wisconsin's hospitals recorded a 1.6% patient care margin in FY 2020, a 70% reduction from 2019. Put simply, COVID has resulted in greater costs for all hospitals and falling margins for many.

Through it all, Wisconsin's hospitals and health systems have demonstrated an even greater commitment to their communities. This includes taking on and resourcing more and more basic government and public health tasks—from virus testing and vaccine administration to serving as de-facto nursing homes and even providing care for 13,000 Afghan evacuees arriving with very little notice at Fort McCoy. All while continuing to treat disease, heal and save accident victims, and best of all, deliver babies.

Those who enter the health care field often describe their motivation to do so as a "calling." That calling is being tested like never before. May 2022 bring some relief to those we count on and do so much to keep us healthy.

This column appears in the January 2022 issue of Wisconsin Banker.

CDC Issues Updated COVID-19 Isolation and Quarantine Guidance for Health Care Workers

New guidance says health care workers with COVID-19 who are asymptomatic can return to work after 7 days with a negative test

The Centers for Disease Control and Prevention (CDC) is releasing updated guidance for isolation and quarantine for health care workers, decreasing their isolation time after infection with COVID-19. Additionally, CDC is releasing an update to guidance for contingency and crisis management in the setting of significant health care worker shortages.

"As the health care community prepares for an anticipated surge in patients due to omicron, CDC is updating our recommendations to reflect what we know about infection and exposure in the context of vaccination and booster doses," CDC Director Rochelle Walensky, MD, said in a statement. "Our goal is to keep health care personnel and patients safe, and to address and prevent undue burden on our health care facilities. Our priority, remains prevention—and I strongly encourage all health care personnel to get vaccinated and boosted."

Specifically, CDC's updated guidance says that:

- Health care workers with COVID-19 who are asymptomatic can return to work after seven days with a negative test, and that isolation time can be cut further if there are staffing shortages.
- Health care workers who have received all recommended COVID-19 vaccine doses, including a booster, do not need to quarantine at home following high-risk exposures.

These guidelines apply only to the health care workforce and may be revised to continue to protect both health care workers and patients as additional information on the omicron variant becomes available to inform recommended actions, CDC says. Additional information will be published as guidance on CDC's website soon and shared with health care organizations and provider groups.

CDC says it continues to evaluate isolation and quarantine recommendations for the broader population as it learns about the omicron variant and will update the public as appropriate.

Increased Coverage and Availability of At-Home COVID Tests Expected in January

The Biden Administration recently announced new resources for at-home, rapid COVID testing. Such tests can help reduce the demand for testing from hospitals and health systems and alleviate the burden on the health care workforce, which in Wisconsin has been stressed even further during the latest COVID surge.

The U.S. Departments of Health and Human Services, Treasury and Labor are tasked with issuing guidance that would require insurers to reimburse their members for purchasing over-the-counter COVID tests. In February 2021, the Biden administration issued guidance clarifying that insurers generally must cover, with no cost sharing, COVID-19 diagnostic tests regardless of whether the patient is experiencing symptoms or has been exposed to COVID-19, when a licensed or authorized health care provider administers or has referred a patient for such a test. Insurers are also prohibited from requiring prior authorization or other medical management for COVID-19 diagnostic testing. The new guidance regarding over-the-counter tests is expected by Jan. 15 and will apply through the end of the public health emergency.

In addition, the Biden administration is planning to purchase 500 million at-home, rapid COVID tests and distribute them directly to individuals. Individuals who would like a test will be able to register on a website to have the test mailed to them at no charge. The website and initial delivery of tests are expected to be available in January 2022.

The Biden administration is also planning to expand federally supported free testing sites across the country and distribute additional at-home tests to community sites, such as health centers and rural clinics. WHA staff will share more details about the availability of at-home tests when additional guidance is issued.

Koreen's Law Receives Strong Bipartisan Support from 81 Wisconsin State Lawmakers

PATIENTS FIRST WISCONSIN

Patients First Wisconsin, a coalition of state and national patient and provider organizations including WHA, applauds the introduction of Koreen's Law with an impressive 81 legislative co-sponsors, including 20 members of the Senate and 61 members of the Assembly. Koreen's Law, introduced as Assembly Bill 718 and Senate Bill 753, prohibits the practice of insurer-mandated white bagging and prevents patients from being left behind with no choice but to pay for care from their own provider completely out-of-pocket.

"While our story was unfortunate, I'm glad that so many Wisconsin lawmakers have acted to prevent another family from going through this," said Koreen Holmes, an Eau Claire mom with triple-negative breast cancer. "To those lawmakers that signed onto this bill: Your actions will make a difference in the lives of people like me."

The bill's 81 sponsors span the political spectrum, representing urban and rural legislative districts and includes the most conservative of Republicans and the most liberal of Democrats.

"Koreen's Law is receiving such strong support from Republican and Democratic lawmakers because protecting high-quality, accessible care for some of our sickest patients is not a partisan issue," said WHA President and CEO Eric Borgerding. "Legislative sponsors of this bill have demonstrated true leadership on an issue that will protect patient care."

But action cannot wait, as a growing number of insurance companies are attempting to mandate white bagging. While this bill was circulated, another health insurance company announced it will unilaterally mandate white bagging at the start of 2022. No negotiation. No patient choice.

"Swift action on Koreen's Law is necessary before more patients are impacted by policies that bypass health system pharmacists' safety checks and care planning processes," said Pharmacy Society of Wisconsin Executive Vice President Sarah Sorum. "White bagging heightens the possibility of drug spoilage and wastage, and delays time-sensitive treatment."

Hospital and physician offices across the state have patients impacted by white bagging. Here are just a few examples of what provider and patient groups have to say about white bagging and Koreen's Law:

- "White bagging creates significant patient safety issues and causes significant delays in providing patients with their medications," said Dr. Dan Malone, President of the Wisconsin Rheumatology Association, which is a member of the Coalition of State Rheumatology Organizations (CSRO). "These problems are especially risky for patients with chronic autoimmune disorders."
- "White bagging is a confusing and disruptive process for patients. It puts an insurance company between providers and their patients," said Rob Gundermann of the Coalition of Wisconsin Aging Groups. "One of CWAG's primary missions is

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to ensure that patients receive medication when they need it. That is exactly what this bill achieves. Once Koreen's Law passes, hundreds of thousands of seniors across the state will know that they do not have to worry about safeguarding themselves from white bagging."

- "Wisconsin has a well-deserved reputation for being a high-quality, high-value state for health care," said Tom Kraus, vice president of government relations at the American Society of Health-System Pharmacists. "Rather than dismantling the positive aspects of integrated care that have made Wisconsin a model for the rest of the country, Koreen's Law will preserve the quality care patients deserve when they need it most. White bagging legislation is rapidly coming to fruition across the country, and Wisconsin is now among the handful of states leading the way."
- "Shared decision-making between provider and patient is paramount when people need infusions to manage or treat debilitating and life-threatening conditions," said Brian Nyquist at the National Infusion Center Association. "White bagging essentially allows insurance companies to disrupt that crucial relationship by dictating where and how patients can get their medications. We think that needs to stop."
- "Separating patients from their providers during cancer treatment causes confusion for patients and, worse yet, fragmented care during one of the scariest moments in our patients' lives," said Dr. Kurt Oettel, past president of the Wisconsin Association of Hematology and Oncology. "Fighting cancer is a true battle, but one that many are successful in because of their own determination, advancements in therapeutics and high-quality health care providers. White bagging puts even more hurdles in the way during a patient's battle with cancer—and at the worst time in their life to do it."
- "We've seen clearly that no condition is immune from the negative impacts of white bagging. Dermatologists are being forced to deal with the negative impacts of this practice, costing patients more money and wasting valuable time for providers and patients alike," said Dr. Julia Kasprzak, past president of the Wisconsin Dermatological Society.

Learn more about the detrimental effects of white bagging on patient care and hear from Wisconsin patients affected by the practice at PatientsFirstWI.com.

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patients ready to be discharged from hospitals during the immediate surge? Does CMS think the nursing home industry's predictions of mass staff departures are a fabrication? If even a fraction of what the nursing homes predict on staff losses comes true, then what, exactly, is CMS's strategy to address the existing crisis when it gets even worse? These are real issues happening out here in the real world; what is the CMS plan for the consequences of this policy?"

The announcement and implementation timeline currently only applies to the 25 states that have not sued CMS in federal court challenging CMS's authority to issue the interim final rule. Those cases, brought by state attorney generals, are currently being appealed to the U.S. Supreme Court, with oral arguments scheduled for Jan. 7. A decision from the Supreme Court impacting some or all states could come soon after.

Additionally, CMS released additional guidance and clarification regarding implementation and enforcement of the interim final rule, including facility-type specific guidance, that can be found in attachments here.

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